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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1039

VAN NORMAN INDUSTRIES, INC.,

Petitioner,

v.

THE UNITED STATES,

Respondent.

REPLY TO MEMORANDUM IN OPPOSITION

JOHN F. COSTELLOE,
Attorney for Petitioner
25 Broadway
New York, New York 10004

Of Counsel:

CHADBOURNE, PARKE, WHITESIDE
& WOLFF
25 Broadway
New York, New York 10004

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Flinching from actuality, Respondent speaks only of a case with facts and law different in kind from petitioner's.

Respondent portrays petitioner as still in the antennae business from which it actually was forever driven about a decade ago by excise surprise.[1]

After conceding below the correctness of the Commissioner's findings that antennae of plaintiff's manufacture had only electronic function and added neither to utility nor ornamentation of automobiles,[2] and after addressing itself below to articles which had "little (and in some instances absolutely nothing) to do with

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[1] Petitioner's Trial Brief, pp. 39 *et seq.*

[2] Commissioner's Findings Nos. 17, 18, 21 and 22 (Pet. pp. 22b-23b, 26b-27b); Opinion below, pp. 4, 5 and 6 (Pet. pp. 4b-8b).

the operation of"[3] automobiles, Respondent speaks to this Court of articles which have "no use other than with respect to, automobiles."[4]

Respondent also[5] shows a desire to return to the position it unsuccessfully advanced below, that physical connection alone draws excise.[6] Respondent would have this Court ignore its own decision of nearly a third of a century ago that an accessory "for" an automobile is an

> "* * * article designed to be used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for such use, whether or not essential to the operation of the vehicle."[7]

Respondent led the Court below into acknowledged conflict with the long-standing decision of the Court of Appeals for the Third Circuit that a taxi sign cannot be an accessory for a taxi because it is an accessory for the taxi business.[8] The working day after such success, Respondent renounced, and announced acceptance and expanded application of the decision

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[3] Brief for Respondent in Court below, p. 8.

[4] Memorandum in Opposition, p. 3.

[5] *Ibid.*

[6] "We are of the opinion that we have to look to the functional relationship of the article to the vehicle and not physical connection alone; this follows from *Universal Battery.*" Opinion below, p. 5 (Pet. p. 6b).

[7] *Universal Battery Co.* v. *United States,* 281 U.S. 580, 583 (1930).

[8] *Smith* v. *McDonald,* 214 F.2d 920 (3d Cir. 1954).

of the Circuit Court of Appeals which it had successfully attacked in the Court below.[9] Now it tells this Court that such acceptance was in result but not in reasoning,[10] even though there is no hint of this in the published language. The excised can only wonder.

Promptly after further leading the Court below into animadversion upon a decision of another Circuit Court of Appeals that a camper body is not an accessory for the truck on which it is mounted,[11] Respondent further renounced, and announced concurrence in that decision;[12] and then went on to announce that a jack for getting the body on and off the truck is not an accessory for the truck because it is an accessory for the body.[13] So too automobile radio antennae, taxed as accessories for radios, would not also be taxed as automobile parts or accessories. Dictionary and regulatory language have long held that an accessory can no more have two principals than a child can have two fathers.

And all this with respect to an excise which, as the Court below observed, can eradicate the net profit of all but the most profitable businesses.[14]

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[9] Rev. Rul. 66-165, 1966 Int. Rev. Bull. No. 24, p. 10 (Pet. p. 2c).

[10] Memorandum in Opposition, p. 4, n. 2.

[11] *King Trailer Co.* v. *United States*, 228 F. Supp. 1013 (S.D Cal. 1964), *aff'd*, 350 F.2d 947 (9th Cir. 1965).

[12] Rev. Rul. 66-163, 1966 Int. Rev. Bull. No. 24, p. 9 (Pet. 1c).

[13] Rev. Rul. 66-164, 1966 Int. Rev. Bull. No. 24, p. 10 (Pet. 1c).

[14] Opinion below, p. 11 (Pet. p. 13b).

That the contested excise has been partially repealed as falling on too many too hard[15] is no answer. This taxpayer was driven out of the business, and trucks (as distinguished from automobiles) are currently excised.

Conclusion

Petitioner respectfully prays that this Court grant the writ and summarily reverse the decision below or grant such other relief it finds appropriate.

Respectfully submitted,

JOHN F. COSTELLOE,
Attorney for Petitioner
25 Broadway
New York, New York 10004

Of Counsel:

CHADBOURNE, PARKE, WHITESIDE & WOLFF
25 Broadway
New York, New York 10004

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[15] H. Rep. No. 433, 89th Cong., 1st Sess. 20 (1965); S. Rep. No. 324, 89th Cong., 1st Sess. A-25 (1965).